

and costs; and the sum really due as aforesaid, or in any other manner ascertained, upon bonds and other instruments of writing, with penalty, shall be considered in law the true debt, and shall be so pleaded by and allowed to administrators and others. Code, Art. 75, sec. 63.²⁹

In *McHard v. Whetcroft*, 3 H. & McH. 85, debt on bond conditioned for the payment of money at or upon the 1st Sept. 1788, the defendant pleaded payment before the issuing of the writ, to wit, the 7th March, 1781, and payment on the day, to wit, the 1st Sept. 1788, and proved a tender in bills of credit, then a legal tender, on the 7th March 1781. It was insisted that a distant day of payment is given for the convenience of the obligor, and that he may therefore pay at any time, and the rule of the civil law on this point was strongly relied on. And of such opinion was the Court of Appeals, and the judgment of the lower Court was reversed. The same point was ruled in the same way in *Quynn v. Whetcroft*, *ibid.* 136.

XIII. This section affects proceedings during the action. See *Bonafous v. Rybot*, 3 Burr. 1370; *Wylie v. Wilkes*, Doug. 519. It has been decided upon the equity of the section that it extends to an action of debt on bond conditioned for the payment of an annuity or of money by instalments, if the defendant is solvent, judgment being entered as a security for future payments.³⁰ But proceedings will not be stayed if the defendant appears to be insolvent, or the bond is conditioned for the payment of a gross sum absolutely, at a day certain, and afterwards defeazanced by an agreement to pay the money by instalments, or where, though the bond is conditioned for the payment of money by instalments, it is expressly agreed that if default be made in any one payment, the bond is to stand in force for the whole principal and interest then remaining due, see *Tidd Prac.* 542, 543. Nor will the Court interfere where it is at all doubtful that the payment stipulated by the condition is not subject to a contingency, *Robinson v. Brown*, 3 C. B. 54. It will be observed that the section does not authorize a *plea* of payment into Court, but only a summary application **670** cation *to the Court, *England v. Watson*, 9 M. & W. 333, and the application is in practice usually made *before* judgment; the Court of Exchequer refused to refer it to a master to take an account of what was actually due for principal and interest on a bond after it had been put in suit, and the plaintiff had obtained a verdict upon it. The plaintiff is entitled to the costs of proceedings in equity relating to the same matter, but not to the costs of a former suit in which the judgment was reversed on error, *Tidd Prac. supra*. It will be observed, also, that the Court is to fix, through its officer, the amount due for principal, interest and costs upon the bond, and to discharge the defendant, which differs the case from a payment of money into Court by the defendant.

The Code, Art. 75, sec. 19,³¹ provides that the defendant in all personal actions, except actions for assault and battery, false imprisonment, libel,

²⁹ Code 1911, Art. 75, sec. 90 & note 13 to 8 & 9 Wm. 3, c. 11.

³⁰ See note 27 *supra*.

³¹ **Payment into court.**—The section cited and the following section were amended by the Act of 1888, ch. 409, so as to enable defendants, when two or more causes of action are joined in one suit, to pay money into